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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,307	09/10/2003	Aman Safaei	W1200-00042	5380

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EXAMINER

STIMPAK, JOHNNA

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/660,307	Applicant(s) SAFAEI ET AL.	
	Examiner Johnna R Stimpak	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/06/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a first office action upon examination of application number 10/660,307. Claims 1-40 are pending and have been examined on the merits discussed below.

Drawings

2. The drawings are objected to because figures 2-11 are too dark. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Microsoft's MapPoint. The following two articles are cited as anticipating the claimed invention.

Baker, Kim et al. "Divide and Conquer". September, 1999.

"Microsoft MapPoint 2000 Delivers New Mapping and Analysis Program". From Newswire, November 1998

As per claim 1, MapPoint teaches assigning unique identifiers to a plurality of retailers, the unique identifiers indicating types of product sold by respective retailers from the plurality of retailers; and identifying on a map display on a computer using the unique identifiers respective locations of retailers from the plurality of retailers (Baker, page 3 – MapPoint identifies sales based on geographic location of the retailer). While MapPoint does not explicitly teach the system being used for analysis of lottery retailers, these limitations merely recite various intended uses of the invention. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art.

See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA

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1963). The claimed recitations of intended use neither result in a structural difference between the claimed invention and the prior art nor in a manipulative difference as compared to the prior art; therefore, the claimed invention is not deemed to be patentably distinct over the prior art.

As per claim 2, MapPoint teaches identifying on the map display sales data for at least one identified retailer (Baker, page 3 – MapPoint identifies sales based on geographic location of the retailer).

As per claim 3, MapPoint teaches sales data represent total sales for a selected time period of the types of product sold by the at least one identified retailer (Newswire, page 1 – users can identify business trends using their own sales data – trends of sales data inherently includes sales over a time period).

As per claim 4, MapPoint teaches identifying on the map display an indication of a location of at least one retailer not selling the product (Baker, page 3, system is used to identify locations where sales are concentrated, as well as where retailers need to improve, inherently the system is identifying locations of retailers where the product is not being sold).

As per claim 5, MapPoint teaches after identifying on the map display an indication of a location of at least one retailer not selling the product, utilizing information discerned from the map display in making a retailer decision (Baker, page 4, the system is used to determine where to introduce new locations for products and retailers).

As per claim 6, MapPoint teaches identifying on the map display demographic data for a geographic region shown on the map display (Baker, page 3 bottom – page 4 – demographic data is displayed).

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As per claim 7, MapPoint teaches after identifying on the map display demographic data for a geographic region shown on the map display, utilizing information discerned from the map display in making a marketing decision (Baker, page 4, displays demographic data showing concentrations of customers meeting age and income criteria used to develop new products and promotions for the specific market groups in the area).

As per claim 8, MapPoint teaches demographic data include population data (Baker, page 3, mapping software shows ethnicity data for specific areas – concentrations of high ethnic population leads to targeting specific products to those groups).

As per claim 9, MapPoint teaches demographic data include population income data (Baker, page 4, demographic data includes income criteria).

As per claim 10, MapPoint teaches identifying on the map display a street address for at least one identified retailer (Baker, page 3, mapping software shows sales penetration by specific street).

As per claim 11, MapPoint teaches automatically generating travel data representing a trip to at least one identified retailer (Baker, page 3, mapping program used to direct vehicles along the fastest routes to the retailers).

As per claim 12, MapPoint teaches travel data represent a travel route to the at least one identified retailer, travel distance, travel time, gas usage, overtime expenses or a combination thereof (Baker, page 3, mapping program used to direct vehicles along the fastest routes, this inherently includes travel time and distance).

As per claim 13, MapPoint teaches travel data represents a travel route to the at least one identified retailer, the method further comprising the steps of utilizing the travel route in

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determining a travel to the one or more retailers (Baker, page 3, mapping program used to direct vehicles along the fastest routes, this inherently includes travel time and distance).

As per claim 14, MapPoint teaches identifying on a map display on a computer a location of at least one lottery retailer from a plurality of lottery retailers; and identifying on the map display lottery sales data respective to the at least one lottery retailer representative of lottery sales by the at least one lottery retailer for a selected period of time. (Baker, page 3 – MapPoint identifies sales based on geographic location of the retailer; Newswire, page 1 – users can identify business trends using their own sales data – trends of sales data inherently includes sales over a time period). While MapPoint does not explicitly teach the system being used for analysis of lottery retailers, these limitations merely recite various intended uses of the invention. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The claimed recitations of intended use neither result in a structural difference between the claimed invention and the prior art nor in a manipulative difference as compared to the prior art; therefore, the claimed invention is not deemed to be patentably distinct over the prior art.

As per claim 15, MapPoint teaches the sales data represent sales according to product type (Baker, page 3, system used to track sales penetration by location).

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As per claim 16, MapPoint teaches the lottery sales data represent total sales for the selected time period of the types of lottery games sold by the respective lottery retailers (Newswire, page 1 – users can identify business trends using their own sales data – trends of sales data inherently includes sales over a time period).

As per claim 17, MapPoint teaches utilizing information discerned from the map display in making a retailer decision (Baker, page 2 bottom – page 3 top – information is used to make business decisions).

As per claim 18, MapPoint teaches identifying on the map display an indication of a location of at least one non-lottery retailer (Baker, page 3, system is used to identify locations where sales are concentrated, as well as where retailers need to improve, inherently the system is identifying locations of retailers where the product is not being sold).

As per claim 19, MapPoint teaches identifying on the map display demographic data for a geographic region shown on the map display (Baker, page 3 bottom – page 4 – demographic data is displayed).

As per claim 20, MapPoint teaches the demographic data includes population (Baker, page 3, mapping software shows ethnicity data for specific areas – concentrations of high ethnic population leads to targeting specific products to those groups).

As per claim 21, MapPoint teaches demographic data include population income data (Baker, page 4, demographic data includes income criteria).

As per claim 22, MapPoint teaches utilizing demographic data information discerned from the map display in making a marketing decision (Baker, page 4, displays demographic data

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showing concentrations of customers meeting age and income criteria used to develop new products and promotions for the specific market groups in the area).

As per claim 23, MapPoint teaches identifying on the map display a street address for at least one identified retailer (Baker, page 3, mapping software shows sales penetration by specific street).

Claims 24-32 are the computer implemented system for performing the steps of claims 1-12. Since the MapPoint system is computer implemented, the rejection as applied to claims 1-12 also applies to claims 24-32.

Claims 33-40 are the computer implemented system for performing the steps of claims 14-23. Since the MapPoint system is computer implemented, the rejection as applied to claims 14-23 also applies to claims 33-40.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Johnson, Dave. "Map Out Your Profits". MapPoint software review.

Tetzeli, Rick. "Mapping for Dollars". GIS systems for market analysis.

O'Malley, Lisa. "Retailing applications of geodemographics: A preliminary investigation". Geodemographics used for retailer market analysis.

Marshall, Patrick. "Review: MapPoint 2000 raises the bar for desktop mapping".

Fox et al, US 5,796,932 – user interface for geographically displaying the impact of weather on managerial planning.

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Usrey et al, US 6,366,890 – product inventory category management and variety optimization method and system.

Fox et al, US 5,832,456 – system and method for weather adapted, business performance forecasting.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnna R Stimpak whose telephone number is 703-305-4566.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS
12/06/04



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